

Impact of the Appointment of Mr. Richard Cordray, Director, Consumer Financial Protection Bureau (CFPB)

On Wednesday January 4th, the President made a controversial "recess appointment" establishing Richard Cordray as Director of the CFPB and bypassing the normal Senate confirmation. What this means:

- With a Director in place, the CFPB can begin to regulate non-bank financial institutions. On Thursday, the Bureau announced the launching of its non-bank supervision program, noting the following:

"Like the bank supervision program, the CFPB's nonbank supervision program is designed to ensure that nonbanks comply with federal consumer financial laws and it is designed to assess risk to consumers arising from these businesses. The nonbank supervision program will include conducting individual examinations and may also include requiring reports from businesses to determine what businesses need greater focus. How often and to what degree the examinations are performed will depend on CFPB's analysis of risks posed to consumers based on factors such as the nonbank's volume of business, types of products or services, and the extent of state oversight."

The CFPB's approach to nonbank examination will be the same as its approach to bank examination. The CFPB Examination Manual, released in October, is the field guide that examiners will use for both. It is available on the CFPB website at:<http://www.consumerfinance.gov/guidance/supervision/manual/>.

- With Cordray assuming the Director's position, the Bureau also announced that Raj Date has moved to the Deputy Director position and Kent Marcus to Assistant Director of Enforcement.
- The Bureau also began to aggressively encourage consumers to send their complaints to the CFPB. A message was sent from the Director to CFPB email subscribers encouraging consumers to "Tell your story" of any complaints to the Bureau, and the main page of the Bureau web site features a large, prominent "Submit a Mortgage Complaint" icon which makes it very easy for consumers to file a complaint. Per the website, the CFPB will forward the issue to the mortgage company involved and keep the consumer updated on the status.
- Given the controversial nature of the President's decision to do a recess appointment, it's clear that the Administration will take steps to convey a critical need to fill the position. On Friday, the President visited the CFPB offices to stress the importance of CFPB's mission and the urgency of Cordray's appointment, noting that the Bureau will now be able to use their powers to supervise "independent mortgage servicers and loan providers".
- So, we continue to believe that it is highly likely that the Bureau will come out "swinging" anxious to demonstrate the value of the Bureau and to justify the recess appointment. In a speech Mr. Cordray delivered at the end of last week, he made it clear

that nonbanks in the mortgage business would be at the top of his list for supervision . See the applicable portion of his speech below.

- "The twin promises of the Dodd-Frank Act, which established us, are that the bureau will have a singular focus on protecting consumers in the financial marketplace, and that we will make sure that large banks and nonbanks are held to the same standards. *In the run-up to the financial crisis, many unsupervised firms led a race to the bottom that pushed aside responsible businesses, including community banks and credit unions, and greatly harmed consumers*".

"Now, for the first time, we can exercise the full authorities granted to us under the new law. That is the specific difference that having a director makes. Today, we are launching the Bureau's program for supervising nonbanks. *We will begin dealing face-to-face with payday lenders, mortgage servicers, mortgage originators, private student lenders, and other firms that often compete with banks but have largely escaped any meaningful federal oversight.*"

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